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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO. 6574 OF 2005

PETITIONER Non-Applicant No.3		Bajaj Allianz Insurance Company Through its Manager Vidhan Sabha Road Raipur (C.G.)
	Vs.	
RESPONDENTS	1.	Ram Prasad S/o Shiv Prasad Kashyap,
Applicant No. 1		Aged about 48 years
Applicant No. 2	2.	Savitri, W/o Ram Prasad, Aged about 42 years
Applicant No. 3	3.	Ashok S/o Ram Prasad, aged about 21 years
Applicant No. 4	4.	Simmi S/o Surendra Kashyap, aged about 4 years
Applicant No. 5	5.	Akash S/o Surendra Kashyap, aged abut 6 years, Res. No. 4 and 5 are minor through Natural guardian Grand Mother – Savitri W/o Ram Prasad Kashyap Respondent No. 1 to 5 are resident of Dheka Bilaspur C.G.
Non-Applicant No. 1	6.	Raju Shrivas, S/o Not known, aged about 20 years, R/o Lodhipara, Bilaspur C.G.
Non-Applicant No. 2	7.	Gore Shrivas, S/o Not Known, Aged about 32 years, R/o Proprietor Star Hair Cutting Saloon, Pratap Chawk, Bilaspur C.G.
Non-Applicant No. 4	8.	Phooldulari W/o Late Surendra Kashyap
Non-Applicant No. 5	9.	Varsha D/o Late Surendra Kashyap, aged about 6 months, Minor : through – mother Fooldulari W/o Late Surendra Kashyap Respondent No. 8 and 9 both are resident of Lodhipara, Bilaspur (C.G.)

Present : Mr. Rajesh Pandey, learned counsel for the petitioner.

ORAL ORDER

(Passed on 2nd January, 2006)

The petitioner-Insurance Company alleging that there is connivance between the owner of the motor vehicle involved in the accident and the dependents of the deceased who are the claimants in putting forth the claim for compensation and contending that the vehicle insured by it did

not involve in the accident, made an application to summon the investigating officer in Criminal Case No. 1143/2005 as a witness in the case. That application has been rejected by the MACT. Hence, this writ petition under Article 227 of the Constitution of India. In this writ petition the Insurance Company has also assailed another order made by the MACT refusing to summon the records of the Criminal Case pending on the file of the ACJM, Bilaspur.

(2) Heard, learned counsel for the petitioner and perused the impugned order.

(3) The petitioner has utterly failed to make out any ground of jurisdictional flaw or material irregularity nor could it be said that there is failure of justice. Although learned counsel for the petitioner cited the judgment of the Andhra Pradesh High Court in the case of **New India Assurance Company Ltd. Vs. K. Vijaya Laxmi & Ors**[1], that judgment of learned Single Judge of the Andhra Pradesh High Court could be distinguished on facts. In the application filed by the petitioner, it is not disclosed that the driver of which vehicle was guilty of rash and negligent driving and in causing the accident. In the absence of such plea in the application, it cannot be said that the MACT has not exercised the discretion vested in it judiciously. It is not a fit case to be entertained under Article 227 of the Constitution. The writ petition is accordingly dismissed, however, with no costs.

Sd/-
Chief Justice
Judge

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1. I (2004) ACC 602

Brajesh